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HOUSE BILL 488

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT; PROVIDING SUBSTANCE ABUSE TREATMENT FOR PERSONS CHARGED WITH CERTAIN SUBSTANCE ABUSE OFFENSES; PROVIDING REPORTING REQUIREMENTS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Substance Abuse and Crime Prevention Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. substance abuse treatment is a proven public safety and health measure. A person charged with a nonviolent drug offense who receives appropriate substance abuse treatment will be less likely to abuse drugs and commit future crimes and will be more likely to live a healthy, stable and productive

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1 life;

2 B. public safety will be enhanced by reducing drug-  
3 related crime and by preserving jail and prison facilities for  
4 violent offenders;

5 C. public health will be improved by reducing drug  
6 abuse and drug dependence by referring those persons charged  
7 with nonviolent drug offenses to substance abuse treatment  
8 programs; and

9 D. community health and safety will be enhanced and  
10 taxpayer dollars will be saved if those persons charged with  
11 nonviolent drug offenses are referred to substance abuse  
12 treatment programs instead of being prosecuted and  
13 incarcerated.

14 Section 3. DEFINITIONS.--As used in the Substance Abuse  
15 and Crime Prevention Act:

16 A. "qualified treatment professional" means a  
17 person with specialized knowledge, skill, experience, training  
18 or education in the area of psychology, psychiatry or addiction  
19 therapy and who has the expertise to conduct the addiction and  
20 life skills assessment necessary to determine a person's  
21 suitability to one or more forms of treatment, including  
22 replacement therapy, and to recommend an appropriate treatment  
23 plan; and

24 B. "substance abuse treatment program" means a  
25 licensed or certified community substance abuse treatment

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1 program, including an outpatient treatment program, halfway  
2 house treatment program, day treatment program, narcotics  
3 replacement therapy program, drug education course, drug  
4 prevention course, limited inpatient treatment program,  
5 residential drug treatment program or detoxification program.  
6 "Substance abuse treatment program" does not include drug  
7 treatment programs offered in prison or jail facilities.

8 Section 4. STAY OF CRIMINAL PROCEEDINGS--SUBSTANCE ABUSE  
9 TREATMENT OPTION.--

10 A. If a person is charged with a violation of  
11 Section 30-31-23 NMSA 1978, the court may, with the consent of  
12 the person, stay all further proceedings with respect to the  
13 charge of violating Section 30-31-23 NMSA 1978 and order an  
14 assessment of the person by a qualified treatment professional  
15 for the purpose of determining the person's addiction severity,  
16 need for treatment and the types of drug treatment and social  
17 services that might be appropriate for the person. The  
18 assessment shall also include recommendations for an  
19 appropriate treatment plan. After receipt of the assessment,  
20 the court shall refer the person to a substance abuse treatment  
21 program upon such reasonable conditions as the court may  
22 prescribe. The period of treatment shall not exceed one year,  
23 and the court shall not order incarceration of the person as a  
24 condition of participation in a substance abuse treatment  
25 program.

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1           B. Upon violation of the terms and conditions of  
2 participation in a substance abuse treatment program, the court  
3 may reinstate criminal proceedings against the person and  
4 proceed as otherwise provided. The court may, in its  
5 discretion, dismiss the proceedings against the person before  
6 the expiration of the maximum period prescribed for the  
7 person's participation in the substance abuse treatment  
8 program.

9           C. If during the period of the person's  
10 participation in a substance abuse treatment program the person  
11 does not violate any of the conditions for participation in the  
12 program, upon expiration of the period, the court shall dismiss  
13 the proceedings against the person.

14           D. Upon the dismissal of the proceedings against  
15 the person pursuant to this section, the person may apply to  
16 the court for an order to seal the records relating to the  
17 person's arrest, indictment or information, finding of guilty  
18 and dismissal pursuant to this section, except nonpublic  
19 records filed with the attorney general. If the court  
20 determines, after a hearing, that the proceedings against the  
21 person were dismissed, it shall enter the order. The effect of  
22 the order shall be to restore the person, in the contemplation  
23 of the law, to the status the person occupied before the arrest  
24 or indictment or information. A person in whose behalf an  
25 order has been entered shall not subsequently be found guilty

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1 of perjury or giving a false statement due to the person's  
2 failure to recite or acknowledge the arrest, indictment or  
3 information in response to any inquiry made of the person for  
4 any purpose.

5 Section 5. PROBATION AND PAROLE VIOLATIONS--SUBSTANCE  
6 ABUSE TREATMENT OPTION.--If a person is charged with a  
7 probation or parole violation for the possession or use of  
8 controlled substances, the court or the parole board may stay  
9 the probation or parole revocation proceeding and order an  
10 assessment and referral in accordance with Section 4 of the  
11 Substance Abuse and Crime Prevention Act.

12 Section 6. SUBSTANCE ABUSE TREATMENT PROGRAMS--  
13 INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE--  
14 REPORTING REQUIREMENTS.--

15 A. The interagency behavioral health purchasing  
16 collaborative shall provide a written report no later than  
17 October 31, 2008 and every October 31 annually thereafter, to  
18 the appropriate interim legislative committee, all New Mexico  
19 criminal court judges, the administrative office of the  
20 district attorneys and the chief public defender. The report  
21 shall evaluate:

22 (1) the fiscal, health and public safety  
23 impacts of courts referring persons to substance abuse  
24 treatment programs pursuant to the Substance Abuse and Crime  
25 Prevention Act; and

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1 (2) changes in behavioral health  
2 infrastructure, illicit drug overdose rates, drug-related  
3 incarceration costs, drug-related crime rates, drug offender  
4 recidivism, prison and jail construction and health services  
5 and public assistance attributable to referring persons to  
6 substance abuse treatment programs pursuant to the Substance  
7 Abuse and Crime Prevention Act.

8 B. The interagency behavioral health purchasing  
9 collaborative may contract with public or private agencies for  
10 production of the report.

11 Section 7. APPROPRIATION.--Nine hundred thousand dollars  
12 (\$900,000) is appropriated from the general fund to the human  
13 services department for expenditure in fiscal year 2009 to  
14 implement substance abuse treatment programs to carry out the  
15 purposes of the Substance Abuse and Crime Prevention Act. Any  
16 unexpended or unencumbered balance remaining at the end of  
17 fiscal year 2009 shall revert to the general fund.

18 Section 8. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2008.